

AMENDED IN ASSEMBLY MARCH 18, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 344

Introduced by Assembly Member La Malfa

February 11, 2003

An act to amend Section 4584 of the Public Resources Code, relating to forest resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 344, as amended, La Malfa. Forest Practice Act: exemptions.

~~(1) The~~

The Z'berg-Nejedly Forest Practice Act of 1973 generally prohibits any person from conducting timber operations on timberland unless the person has submitted a timber harvesting plan to the Department of Forestry and Fire Protection and received approval of that plan from the Director of Forestry and Fire Protection.

This bill would authorize the State Board of Forestry and Fire Protection to exempt from the act the cutting and removal of trees to reduce the threat of wildfire if the removal satisfies certain conditions, including limiting removal of trees to areas identified as urban wildland interface communities in the vicinity of federal lands, as specified, and requiring upon completion of operations, that the site immediately meet the stocking standards of the commercial thinning intermediate treatment method. The bill would require surface fuels that could promote the spread of wildfire to be chipped, burned, or otherwise removed within 45 days from the date of commencement of timber operations. The bill would require timber operations to reduce the threat

of wildfire to comply with specified laws. The bill would require the board to adopt regulations to carry out the exemption.

This bill would also require a registered professional forester to file the exemption with the department and to certify, among other things, that subsequent timber operations comply with the intent of the bill.

~~(2) Existing law prohibits a person, whether acting as an individual or as a member of a partnership or as an officer or employee of a corporation or other legal entity, from obtaining more than one such exemption in a 5-year period under the Z'berg-Nejedly Forest Protection Act of 1973 for a one-time conversion of less than 3 acres to a nontimber use. Existing law authorizes the State Board of Forestry and Fire Protection to adopt regulations for a waiver of the 5-year limitation, as specified, including a process for appeal of a denial of a waiver. Existing law requires the board to adopt regulations requiring documentation of a bona fide intent to complete the conversion and requiring the exemption to expire upon a change in timber or timberland ownership.~~

~~This bill would delete the above provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Past disruptions of natural fire cycles and other
- 4 management practices have resulted in wildfires of increasing
- 5 intensity and severity.
- 6 (b) The second largest fire season in the last 50 years occurred
- 7 during the summer of 2002. That summer, more than 67,000
- 8 wildfires destroyed nearly 7 million acres of national forest.
- 9 (c) Under the National Fire Plan, the hazardous fuel treatment
- 10 program has expanded significantly, with a greater focus on
- 11 treatments intended to protect communities in the wildland urban
- 12 interface.
- 13 (d) Treatment of hazardous fuel reduces the impacts of
- 14 wildfires on communities, natural resources, and cultural
- 15 resources, and restores health to fire-adapted ecosystems.
- 16 (e) The program focus areas for 2003 include all of the
- 17 following:



(1) Increasing the level of treatment in the wildland urban interface in close cooperation with stakeholders.

(2) Reducing fire risks where ecosystem risks are excessive, while preventing low-risk areas from deteriorating.

(3) Increasing the use of private sector services to reduce hazardous fuels.

SEC. 2. Section 4584 of the Public Resources Code is amended to read:

4584. Upon determining that the exemption is consistent with the purposes of this chapter, the board may exempt from this chapter or portions thereof, any person engaged in forest management whose activities are limited to any of the following:

(a) The cutting or removal of trees for the purpose of constructing or maintaining a right-of-way for utility lines.

(b) The planting, growing, nurturing, shaping, shearing, removal, or harvest of immature trees for Christmas trees or other ornamental purposes or minor forest products, including fuelwood.

(c) The cutting or removal of dead, dying, or diseased trees of any size.

(d) Site preparation.

(e) Maintenance of drainage facilities and soil stabilization treatments.

(f) Timber operations on land managed by the Department of Parks and Recreation.

~~(g) The one-time conversion of less than three acres to a nontimber use.~~

(g) (1) The one-time conversion of less than three acres to a nontimber use. No person, whether acting as an individual or as a member of a partnership, or as an officer or employee of a corporation or other legal entity, may obtain more than one exemption pursuant to this subdivision in a five-year period. If a partnership has as a member, or if a corporation or any other legal entity has as an officer or employee, a person who has received this exemption within the past five years, whether as an individual or as a member of a partnership, or as an officer or employee of a corporation or other legal entity, then that partnership, corporation, or other legal entity is not eligible for this exemption. "Person," for purposes of this subdivision, means an individual, partnership, corporation, or any other legal entity.

1 (2) (A) *Notwithstanding Section 4554.5, the board shall adopt*
2 *regulations that become effective and operative on or before July*
3 *1, 2002, and do all of the following:*

4 (i) *Identify the required documentation of a bona fide intent to*
5 *complete the conversion that an applicant will need to submit in*
6 *order to be eligible for the exemption in paragraph (1).*

7 (ii) *Authorize the department to inspect the sites approved in*
8 *conversion applications that have been approved on or after*
9 *January 1, 2002, in order to determine that the conversion was*
10 *completed within the two-year period described in subparagraph*
11 *(B) of paragraph (2) of subdivision (a) of Section 1104.1 of Title*
12 *14 of the California Code of Regulations.*

13 (iii) *Require the exemption under this subdivision to expire if*
14 *there is any change in timberland ownership. The person who*
15 *originally submitted an application for an exemption under this*
16 *subdivision shall notify the department of a change in timberland*
17 *ownership on or before five calendar days after a change in*
18 *ownership.*

19 (iv) *The board may adopt regulations allowing a waiver of the*
20 *five-year limitation described in paragraph (1) upon finding that*
21 *the imposition of the five-year limitation would impose an undue*
22 *hardship on the applicant for the exemption. The board may adopt*
23 *a process for an appeal of a denial of a waiver.*

24 (B) *The application form for the exemption pursuant to*
25 *paragraph (1) shall prominently advise the public that violations*
26 *of the conversion exemption, including conversions applied for in*
27 *the name of someone other than the person or entity implementing*
28 *the conversion in bona fide good faith, is a violation of this chapter*
29 *and penalties may accrue up to ten thousand dollars (\$10,000) for*
30 *each violation pursuant to Article 8 (commencing with Section*
31 *4601).*

32 (h) *Easements granted by a right-of-way construction*
33 *agreement administered by the federal government if any timber*
34 *sales and operations within or affecting these areas are reviewed*
35 *and conducted pursuant to the National Environmental Policy Act*
36 *of 1969 (42 U.S.C. Sec. 4321 et seq.).*

37 (i) *The cutting, removal, or sale of timber or other solid wood*
38 *forest products from the species Taxus brevifolia (Pacific yew),*
39 *provided that the known locations of any stands of this species*
40 *three inches and larger in diameter at breast height are identified*

1 in the exemption notice submitted to the department. Nothing in
2 this subdivision is intended to authorize the peeling of bark from,
3 or the cutting or removal of, *Taxus brevifolia* within a watercourse
4 and lake protection zone, special treatment area, buffer zone, or
5 other area where timber harvesting is prohibited or otherwise
6 restricted pursuant to board rules.

7 (j) (1) The cutting or removal of trees in compliance with
8 Sections 4290 and 4291 that eliminates the vertical continuity of
9 vegetative fuels and the horizontal continuity of tree crowns for the
10 purpose of reducing flammable materials and maintaining a
11 fuelbreak for a distance of not more than 150 feet on each side from
12 an approved and legally permitted structure that complies with the
13 California Building Code, when that cutting or removal is
14 conducted in compliance with this subdivision. For purposes of
15 this subdivision, an “approved and legally permitted structure”
16 includes only structures that are designed for human occupancy
17 and garages, barns, stables, and structures used to enclose fuel
18 tanks.

19 (2) (A) The cutting or removal of trees pursuant to this
20 subdivision shall be limited to cutting or removal that will result
21 in a reduction in the rate of fire spread, fire duration and intensity,
22 fuel ignitability, or ignition of the tree crowns and shall be in
23 accordance with any regulations adopted by the board pursuant to
24 this section.

25 (B) Trees may not be cut or removed pursuant to this
26 subdivision by the clearcutting regeneration method, by the seed
27 tree removal step of the seed tree regeneration method, or by the
28 shelterwood removal step of the shelterwood regeneration
29 method.

30 (3) (A) Surface fuels, including logging slash and debris, low
31 brush, and deadwood, that could promote the spread of wildfire
32 shall be chipped, burned, or otherwise removed from all areas of
33 timber operations within 45 days from the date of commencement
34 of timber operations pursuant to this subdivision.

35 (B) (i) All surface fuels that are not chipped, burned, or
36 otherwise removed from all areas of timber operations within 45
37 days from the date of commencement of timber operations may be
38 determined to be a nuisance and subject to abatement by the
39 department or the city or county having jurisdiction.

1 (ii) The costs incurred by the department, city, or county, as the
2 case may be, to abate the nuisance upon any parcel of land subject
3 to the timber operations, including, but not limited to,
4 investigation, boundary determination, measurement, and other
5 related costs, may be recovered by special assessment and lien
6 against the parcel of land by the department, city, or county. The
7 assessment may be collected at the same time and in the same
8 manner as ordinary ad valorem taxes, and shall be subject to the
9 same penalties and the same procedure and sale in case of
10 delinquency as is provided for ad valorem taxes.

11 (4) All timber operations conducted pursuant to this
12 subdivision shall conform to applicable city or county general
13 plans, city or county implementing ordinances, and city or county
14 zoning ordinances. Nothing in this paragraph is intended to
15 authorize the cutting, removal, or sale of timber or other solid
16 wood forest products within an area where timber harvesting is
17 prohibited or otherwise restricted pursuant to the rules or
18 regulations adopted by the board.

19 (5) (A) The board shall adopt regulations, initially as
20 emergency regulations in accordance with subparagraph (B), that
21 the board considers necessary to implement and to obtain
22 compliance with this subdivision.

23 (B) The emergency regulations adopted pursuant to
24 subparagraph (A) shall be adopted in accordance with Chapter 3.5
25 (commencing with Section 11340) of Part 1 of Division 3 of Title
26 2 of the Government Code. The adoption of emergency
27 regulations is deemed to be an emergency and necessary for the
28 immediate preservation of the public peace, health, and safety, or
29 general welfare.

30 (k) (1) The cutting and removal of trees by forest thinning
31 methods to reduce the threat of wildfire, if all of the following
32 conditions are met:

33 (A) The cutting and removal of trees is limited to the cutting
34 and removal of trees that eliminates the vertical continuity of
35 vegetative fuels and the horizontal continuity of tree crowns for the
36 purpose of reducing the rate of fire spread, fire duration and
37 intensity, fuel ignitability, or ignition of tree crowns, with
38 regulations adopted by the board pursuant to paragraph (5).

39 (B) The cutting and removal of trees is limited to reducing
40 flammable materials in forested areas surrounding the areas that



1 are identified by the United States Department of Agriculture and
2 the United States Department of the Interior as urban wildland
3 interface communities in the vicinity of federal lands that are at
4 high risk from wildfire and are listed in 66 Federal Register 751
5 et seq. (January 4, 2001).

6 (C) Trees are not to be cut or removed by the clearcutting
7 regeneration method, by the seed tree removal step of the seed tree
8 regeneration method, or by the shelterwood removal step of the
9 shelterwood regeneration method. Upon completion of
10 operations, the site shall immediately meet the stocking standards
11 of the commercial thinning intermediate treatment method.

12 (D) Surface fuels, including logging slash and debris, low
13 brush, and deadwood, that could promote the spread of wildfire are
14 chipped, burned, or otherwise removed from all areas of timber
15 operations within 45 days from the date of commencement of
16 timber operations.

17 (E) All cutting and removal operations shall conform to all
18 applicable city, county, or city and county general plans,
19 implementing ordinances, or zoning ordinances.

20 (2) Nothing in this subdivision authorizes the cutting and
21 removal of trees within a watercourse and lake protection zone,
22 special treatment area, buffer zone, or other area where timber
23 harvesting is prohibited or otherwise restricted pursuant to rules
24 adopted by the board.

25 (3) The removal of trees pursuant to this subdivision shall
26 satisfy all provisions of subdivision (b) of Section 1038 of Title 14
27 of the California Code of Regulations restricting and limiting the
28 use of heavy equipment and new road construction on steep slopes
29 and unstable areas, and protecting known archaeological and
30 endangered species sites and watercourse and lake protection
31 zones.

32 (4) A registered professional forester shall be responsible for
33 filing the exemption under this subdivision with the department
34 and shall certify all of the following:

35 (A) Subsequent timber operations will comply with the intent
36 of this subdivision.

37 (B) He or she has personally inspected the timber operations
38 and evaluated the potential for any significant adverse effects on
39 the natural resources of the state.

- 1 (C) The timber operations, if implemented in compliance with
- 2 the requirements of the commercial thinning method as adopted by
- 3 the board, are not reasonably expected to have any significant
- 4 adverse effects on the natural resources of the state.
- 5 (5) The board shall adopt regulations to carry out this
- 6 subdivision.

